



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2020-0362; FRL-9238-02-R4]

#### Air Plan Approval; FL; Removal of Motor Vehicle Rules

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule

**SUMMARY:** The Environmental Protection Agency (EPA) is approving changes to a State Implementation Plan (SIP) revision submitted by the State of Florida, through the Florida Department of Environmental Protection (FDEP), in a letter dated July 2, 2020. Specifically, EPA is approving the removal of rules prohibiting tampering with motor vehicle air pollution control equipment and rules concerning visible emissions from motor vehicles. These rules were previously approved into the SIP even though they were not required by the Clean Air Act (CAA or Act) to be in the SIP. EPA is approving the removal of the tampering rules and visible emission rules from the federally approved SIP because removing the requirements is consistent with the CAA and applicable regulations.

**DATES:** This rule is effective [Insert 30 days after date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2020-0362. All documents in the docket are listed on the [www.regulations.gov](https://www.regulations.gov) website. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](https://www.regulations.gov) or in hard copy at the Air Regulatory

Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9222. Ms. Kelly Sheckler can also be reached via electronic mail at [sheckler.kelly@epa.gov](mailto:sheckler.kelly@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Florida submitted a SIP revision, through a letter dated July 2, 2020, to update the State's air quality rules, specifically, for the removal of Chapters 62-243 and 62-244 from the Florida SIP. The first rule relates to anti-tampering measures that restricted the removal or disabling of specific motor vehicle air pollution control devices and prohibited the sale, lease, or transfer of motor vehicles by licensed motor vehicle dealers. The second rule relates to the prohibition of operating either gasoline or diesel-powered vehicles on public roads that emit visible emissions for more than five continuous seconds. Chapters 62-243 and 62-244 implement certain "on-road" prohibitions of Florida Statutes (F.S.) Section 316.2935.

The purpose of Chapter 62-243, *Tampering with Motor Vehicles Air Pollution Control Equipment*, is to prohibit licensed motor vehicle dealers from offering for sale, lease or transfer, vehicles that had the emission control components tampered with or removed. Chapter 62-244, *Visible Emissions from Motor Vehicles*, implements requirements relating to the operation of a motor vehicle on public roads in the state of Florida that emit visible emissions from the exhaust

tailpipe for more than a continuous period of five minutes. These rules specifically were intended to give guidance to law enforcement officers on how to issue noncriminal traffic citations to anyone operating a motor vehicle emitting visible emissions from the vehicle's tailpipe on public roads.

On November 22, 2021, EPA published a notice of proposed rulemaking (NPRM) to approve the aforementioned changes to Florida's SIP. See 86 FR 66255. EPA's November 22, 2021, NPRM includes further detail on the changes made in Florida's July 2, 2020, submittal and EPA's rationale for approving these changes to the SIP. Comments were due on the November 22, 2021, NPRM on or before December 22, 2021. EPA received no comments on the November 22, 2021, NPRM. Therefore, EPA is approving the changes in this final action.

## **II. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. EPA is finalizing the removal of provisions from the Florida SIP regarding the Motor Vehicle Rules at Chapter 62-243, F.A.C. – *Tampering with Motor Vehicle Air Pollution Control Equipment* and Chapter 62-244, F.A.C. – *Visible Emissions from Motor Vehicles*, which are incorporated by reference in accordance with the requirements of 1 CFR part 51. EPA has made and will continue to make the SIP generally available at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).<sup>1</sup>

## **III. Final Action**

EPA is removing Chapter 62-243, F.A.C. – *Tampering with Motor Vehicle Emission Control Equipment*, and Chapter 62-244, F.A.C. – *Visible Emissions from Mobile Sources*, in their entirety, from the Florida SIP. EPA is taking final action to approve these changes to the SIP because they are consistent with the CAA.

## **IV. Statutory and Executive Order Reviews**

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<sup>1</sup> See 62 FR 27968 (May 22, 1997).

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 18, 2022.

Daniel Blackman,  
*Regional Administrator,*  
*Region 4.*

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart K - Florida**

#### **§52.520 [Amended]**

2. In §52.520(c), the table is amended by:

a. Removing the heading “Chapter 62-243 Tampering With Motor Vehicle Air Pollution Control Equipment” and the entries “62-243.100,” “62-243.200,” “62-243.300,” “62-243.400,” “62-243.500,” “62-243.600,” and “62-243.700;” and

b. Removing the heading “Chapter 62-244 Visible Emissions From Motor Vehicles” and the entries “62-244.100,” “62-244.200,” “62-244.300,” “62-244.400,” “62-244.500,” and “62-244.600.”

[FR Doc. 2022-01303 Filed: 1/24/2022 8:45 am; Publication Date: 1/25/2022]